

DAVIS WRIGHT TREMAINE LLP

1633 Broadway

New York, NY 10019

(212) 489-8230

Attorneys for Defendant Varolii Corporation

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

RICHARD M. ZELMA,

Plaintiff,

vs.

MEDCO HEALTH SOLUTIONS, INC.
d/b/a MEDCO, VAROLII, INC., WEST
CORPORATION d/b/a WEST BUSINESS
SERVICES INC., JANETTE KAY
ELSON, JOHN DOES (1-10) and ABC
CORPORATIONS (1-10), each acting
Individually, in concert, or as a group,

Defendants.

CIVIL ACTION NO. 11-3465 (FSH)

ANSWER TO COMPLAINT ON BEHALF OF DEFENDANT VAROLII CORPORATION

Defendant Varolii Corporation (“Varolii”), by its attorneys Davis Wright Tremaine LLP,
as and for its Answer to plaintiff's Complaint says:

I. INTRODUCTION

1. No answer is provided to the allegations contained in Paragraph 1 of the Complaint as the allegations contained therein are not directed to this defendant.

2. To the extent that Paragraph 2 of the Complaint contains allegations directed to this defendant, the allegations are denied.

II. PARTIES

3. Admit the allegations contained in Paragraph 3 of the Complaint.

FACILITATOR DEFENDANT - MEDCO

4. No answer is provided to the allegations contained in Paragraph 4 of the Complaint as the allegations contained therein are not directed to this defendant.

5. No answer is provided to the allegations contained in Paragraph 5 of the Complaint as the allegations contained therein are not directed to this defendant.

CALLER DEFENDANT - VAROLII

6. In response to the allegations contained in Paragraph 6 of the Complaint, admit that Varolii is a Washington corporation with the business and service addresses noted, and otherwise denied.

CALLER DEFENDANT - WEST CORPORATION

7. No answer is provided to the allegations contained in Paragraph 7 of the Complaint as the allegations contained therein are not directed to this defendant.

DEFENDANT - JANETTE KAY NELSON

8. No answer is provided to the allegations contained in Paragraph 8 of the Complaint as the allegations contained therein are not directed to this defendant.

9. No answer is provided to the allegations contained in Paragraph 9 of the Complaint as the allegations contained therein are not directed to this defendant.

III. JURISDICTION AND VENUE

10. In response to the allegations contained in Paragraph 10 of the Complaint, admit that the facts giving rise to this Complaint had their primary effect in the County of Bergen, but deny that the New Jersey Superior Court, Bergen County, has jurisdiction over all claims asserted in the Complaint.

11. Deny the allegations contained in Paragraph 11 of the Complaint.

IV. NATURE OF CLAIMS

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint.

13. No answer is provided to Paragraph 13 of the Complaint as it contains no allegations directed to this defendant.

14. Deny the allegations of Paragraph 14 of the Complaint.

15. No answer is provided to Paragraph 15 of the Complaint as it contains no allegations directed to this defendant.

16. No answer is provided to Paragraph 16 of the Complaint as it contains no allegations directed to this defendant.

**V. FACTS RELEVANT TO THE COMPLAINT FACILITATOR
DEFENDANT - MEDCO**

17. No answer is provided to Paragraph 17 of the Complaint as it contains no allegations directed to this defendant.

18. No answer is provided to Paragraph 18 of the Complaint as it contains no allegations directed to this defendant.

19. No answer is provided to Paragraph 19 of the Complaint as it contains no allegations directed to this defendant.

20. No answer is provided to Paragraph 20 of the Complaint as it contains no allegations directed to this defendant.

21. To the extent that Paragraph 21 of the Complaint contains allegations directed to this defendant, the allegations are denied.

22. No answer is provided to Paragraph 22 of the Complaint as it contains no allegations directed to this defendant.

23. To the extent that Paragraph 23 of the Complaint contains allegations directed to this defendant, the allegations are denied.

24. To the extent that Paragraph 24 of the Complaint contains allegations directed to this defendant, the allegations are denied.

25. No answer is provided to Paragraph 25 of the Complaint as it contains no allegations directed to this defendant.

VI. FACTS RELEVANT TO THE COMPLAINT CALLER DEFENDANT - VAROLII

26. In response to the allegations contained in Paragraph 26 of the Complaint, admitted as to four attempts, for three of which no prerecorded message was initiated, and otherwise denied.

27. In response to the allegations contained in Paragraph 27 of the Complaint, admitted as to four attempts, for three of which no prerecorded message was initiated, and otherwise denied.

28. Deny the allegations of Paragraph 28 of the Complaint.

29. Deny the allegations of Paragraph 29 of the Complaint.

30. In response to the allegations contained in Paragraph 30 of the Complaint, admitted that calls were placed on behalf of Medco. Defendant Varolii is without knowledge or information sufficient to admit or deny the remaining allegations of Paragraph 30, but to the extent necessary denies said allegations.

31. Deny the allegations of Paragraph 31 of the Complaint.

32. Deny the allegations of Paragraph 32 of the Complaint.

33. Deny the allegations of Paragraph 33 of the Complaint.

VII. FACTS RELEVANT TO THE COMPLAINT CALLER DEFENDANT - WEST

34. No answer is provided to the allegations contained in Paragraph 34 of the Complaint as the allegations contained therein are not directed to this defendant.

35. No answer is provided to the allegations contained in Paragraph 35 of the Complaint as the allegations contained therein are not directed to this defendant.

36. No answer is provided to the allegations contained in Paragraph 36 of the Complaint as the allegations contained therein are not directed to this defendant.

37. In response to the allegations contained in Paragraph 37 of the Complaint, admit that Varolii used an auto dialer to initiate its calls, but Varolii is without knowledge or information sufficient to form a belief as to the truth of the allegation that the calls were made absent express written consent from Plaintiff, and otherwise no answer is provided to the allegations contained in this paragraph to the extent they are not directed to this defendant.

38. No answer is provided to the allegations contained in Paragraph 38 of the Complaint as the allegations contained therein are not directed to this defendant

39. No answer is provided to the allegations contained in Paragraph 39 of the Complaint as the allegations contained therein are not directed to this defendant.

VIII. FACTS RELEVANT TO THE COMPLAINT DEFENDANT - NELSON

40. No answer is provided to the allegations contained in Paragraph 40 of the Complaint as the allegations contained therein are not directed to this defendant.

41. No answer is provided to the allegations contained in Paragraph 41 of the Complaint as the allegations contained therein are not directed to this defendant.

42. No answer is provided to the allegations contained in Paragraph 42 of the Complaint as the allegations contained therein are not directed to this defendant.

43. No answer is provided to the allegations contained in Paragraph 43 of the Complaint as the allegations contained therein are not directed to this defendant.

44. No answer is provided to the allegations contained in Paragraph 44 of the Complaint as the allegations contained therein are not directed to this defendant.

45. No answer is provided to the allegations contained in Paragraph 45 of the Complaint as the allegations contained therein are not directed to this defendant.

46. No answer is provided to the allegations contained in Paragraph 46 of the Complaint as the allegations contained therein are not directed to this defendant.

IX. ADDITIONAL FACTS RELEVANT TO THE COMPLAINT

47. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47 of the Complaint.

48. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48 of the Complaint.

49. No answer is provided to the allegations contained in Paragraph 49 of the Complaint as the allegations contained therein are not directed to this defendant.

50. This paragraph is not understood. To the extent that Paragraph 50 of the Complaint contains allegations directed to this defendant, denied.

51. This paragraph is not understood. To the extent that Paragraph 51 of the Complaint contains allegations directed to this defendant, denied.

52. This paragraph is not understood. To the extent that Paragraph 52 of the Complaint contains allegations directed to this defendant, denied.

53. This paragraph is not understood. To the extent that Paragraph 53 of the Complaint contains allegations directed to this defendant, denied.

54. This paragraph is not understood. To the extent that Paragraph 54 of the Complaint contains allegations directed to this defendant, denied.

55. To the extent that Paragraph 55 of the Complaint contains allegations directed to this defendant, denied.

56. To the extent that Paragraph 56 of the Complaint contains allegations directed to this defendant, denied.

57. To the extent that Paragraph 57 of the Complaint contains allegations directed to this defendant, denied.

58. To the extent that Paragraph 58 of the Complaint contains allegations directed to this defendant, denied.

59. To the extent that Paragraph 59 of the Complaint contains allegations directed to this defendant, denied.

60. Deny the allegations contained in Paragraph 60 of the Complaint.

61. To the extent that Paragraph 61 of the Complaint contains allegations directed to this defendant, denied.

62. No answer is provided to Paragraph 62 of the Complaint as this paragraph contains no allegations directed to this defendant.

**X. COUNT ONE - ENGAGED IN PROHIBITED ACTIVITY PURSUANT TO
47 U.S.C. §217**

63. Defendant repeats its responses to the previous paragraphs of the Complaint as if fully set forth herein at length.

64. To the extent that Paragraph 64 of the Complaint contains allegations directed to this defendant, denied.

**XI. COUNT TWO - ENGAGING IN PROHIBITED TELEPHONE ACTIVITY
PURSUANT TO 47 U.S.C. §§223 (a)(1)(C);(D);&(E)**

65. Defendant repeats its responses to the previous paragraphs of the Complaint as if fully set forth herein at length.

66. To the extent that Paragraph 66 of the Complaint contains allegations directed to this defendant, denied.

67. To the extent that Paragraph 67 of the Complaint contains allegations directed to this defendant, denied.

68. To the extent that Paragraph 68 of the Complaint contains allegations directed to this defendant, denied.

69. To the extent that Paragraph 69 of the Complaint contains allegations directed to this defendant, denied.

70. To the extent that Paragraph 70 of the Complaint contains allegations directed to this defendant, denied.

**XII. COUNT THREE - ENGAGING IN PROHIBITED TELEPHONE
ACTIVITY PURSUANT TO N.J.S.A. §2C:33-4(c)
REPEATED HARASSING UNLAWFUL CALLS**

71. Defendant repeats its responses to the previous paragraphs of the Complaint as if fully set forth herein at length.

72. To the extent that Paragraph 72 of the Complaint contains allegations directed to this defendant, denied.

73. To the extent that Paragraph 73 of the Complaint contains allegations directed to this defendant, denied.

XIII. COUNT FOUR - ENGAGING IN PROHIBITED ACTIVITY PURSUANT TO N.J.S.A. §56:8-119 & AUTHORITY OF 47 U.S.C. §227 et seq.

74. Defendant repeats its responses to the previous paragraphs of the Complaint as if fully set forth herein at length.

75. To the extent that Paragraph 75 of the Complaint contains allegations directed to this defendant, denied.

76. No answer is provided to Paragraph 76 of the Complaint as this paragraph contains no allegations directed to this defendant.

77. To the extent that Paragraph 77 of the Complaint contains allegations directed to this defendant, denied.

FIRST SEPARATE DEFENSE

78. Recovery is barred in this action by reason of the expiration of the applicable statute of limitations.

SECOND SEPARATE DEFENSE

79. The complaint fails to state a claim upon which relief can be granted.

ANSWER TO CROSSCLAIMS

This defendant denies the allegations of any and all cross claims filed or which may be filed against it.

JURY DEMAND

The defendant Varolii Corporation demands a trial by jury on all issues.

DEMAND FOR STATEMENT OF DAMAGES

PLEASE TAKE NOTICE that defendant Varolii Corporation demands that plaintiff furnish a statement of damages claimed within the time prescribed by the Rules of Court.

DESIGNATION OF TRIAL COUNSEL

Please be advised that Robert Balin, Esq. is hereby designated as trial counsel on behalf of Defendant, Varolii Corporation pursuant to the Rules made and provided.

CERTIFICATION

It is hereby certified that a copy of the within Answer was served within the time prescribed by the Rules of Court, as extended by the Court and consent of counsel.

DAVIS WRIGHT TREMAINE LLP

Dated: July 6, 2011

By: /s/ Robert D. Balin
Robert D. Balin

1633 Broadway
New York, NY 10019
Phone: (212) 489-8230
Facsimile: (212) 489-8340
Email: robbalin@dwt.com

Attorneys for Defendant Varolii Corporation

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

RICHARD M. ZELMA,

Plaintiff,

vs.

MEDCO HEALTH SOLUTIONS, INC.
d/b/a MEDCO, VAROLII, INC., WEST
CORPORATION d/b/a WEST BUSINESS
SERVICES INC., JANETTE KAY
ELSON, JOHN DOES (1-10) and ABC
CORPORATIONS (1-10), each acting
Individually, in concert, or as a group,

Defendants.

CIVIL ACTION NO. 11-3465 (FSH)

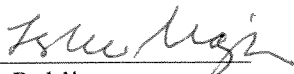
CERTIFICATE OF SERVICE

I, MEGAN DUFFY, associated with Davis Wright Tremaine LLP, attorneys for
Defendant Varolii Corporation:

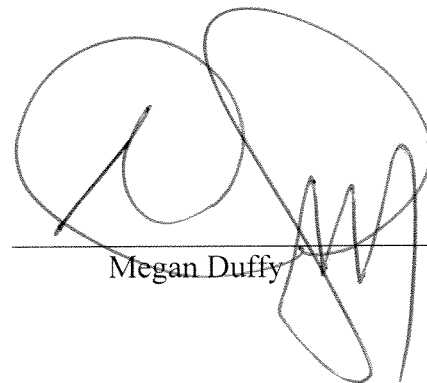
I am over eighteen (18) years of age and reside in New York, New York. On the 6th day
of July, 2011, I caused to be served copies of the ANSWER TO COMPLAINT ON BEHALF
OF DEFENDANT VAROLII CORPORATION on the following via U.S. Mail:

Richard M. Zelma
940 Blanch Avenue
Norwood, NJ 07648
(201) 767-8153
Pro Se

Sworn to before me this
6th of July, 2011


Notary Public

LESLIE MAJER
Notary Public, State of New York
No. 4797970
Qualified in Kings County
Commission Expires October 31, 2013
DWT 17542315v1 0088492-000002


Megan Duffy